

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INTER-COUNTY RURAL ELECTRIC)	
COOPERATIVE CORPORATION)	
)	
COMPLAINANT)	
v.)	CASE NO. 94-326
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

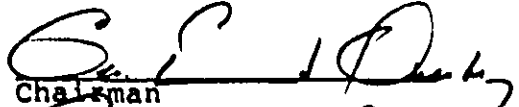
Kentucky Utilities Company ("KU") is hereby notified that it has been named as defendant in a formal complaint regarding service to North Wire, Inc. ("North Wire") filed by Inter-County Rural Electric Cooperative Corporation ("Inter-County") on August 29, 1994, a copy of which is attached hereto. Inter-County also moved the Commission immediately to prohibit KU from extending service to North Wire pending final resolution of this case.

Pursuant to 807 KAR 5:001, Section 12, KU is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint and motion within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 9th day of September, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

RECEIVED

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AUG 29 1994

PUBLIC SERVICE
COMMISSION

INTER-COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION

COMPLAINANT

VS:

COMPLAINT

CASE NO. 94326

KENTUCKY UTILITIES COMPANY

DEFENDANT

* * * * *

Complainant, Inter-County Rural Electric Cooperative Corporation ("Inter-County"), for its formal Complaint against the Defendant, Kentucky Utilities Company ("Kentucky Utilities"), states as follows, to-wit:

1. Inter-County is a non-profit, Kentucky corporation without any capital stock, and its Post Office address is 1009 Hustonville Road, P.O. Box 87, Danville, Kentucky 40423-0087.
2. Kentucky Utilities is a Kentucky corporation and its Post Office address is One Quality and Vine Streets, Lexington, Kentucky 40507.
3. Inter-County is in the business of distributing and furnishing electricity, at retail, to approximately 17,000 member-consumers in 12 central Kentucky counties including Marion County, Kentucky.
4. Kentucky Utilities is in the business of, *inter alia*, distributing and furnishing electricity, at retail, to customers in central Kentucky, including customers in Marion County, Kentucky.

5. Both Inter-County and Kentucky Utilities are "retail electric suppliers" as that term is defined in KRS 278.010(4).

6. This Commission has established certified territories in Marion County, Kentucky, for both Inter-County and Kentucky Utilities pursuant to KRS 278.016-.018. The boundary line defining the certified territory of each bisects Tract 2F of the Lebanon-Marion County Industrial Park, a copy of which is attached hereto and referred to as Exhibit "1". An electric consuming facility, as that term is defined in KRS 278.010(8), has purchased Tract 2F from the Marion County Industrial Foundation, Inc. on March 1, 1994, and its partially constructed facility straddles the territorial boundary line between Inter-County and Kentucky Utilities as shown on Exhibit "1".

7. On or about June 17, 1994, the electric consuming facility which is North Wire, Inc. of Osceola, Wisconsin, applied for retail electric service from Inter-County, and completed an application for membership on July 26, 1994. A copy of the application for membership is attached hereto and referred to as Exhibit "2". In response to the request for service, Inter-County began providing retail electric service to North Wire, Inc. on June 21, 1994, from its existing distribution line located on Tract 2F, and continues to do so.

8. Upon information and belief, Inter-County alleges that Kentucky Utilities intends to provide retail electric service to North Wire, Inc. as shown by its letter dated August 26, 1994, a copy of which is attached hereto and referred to herein as

Exhibit "3", and overt actions undertaken on August 25, 1994, in locating a transformer and transformer pad adjacent to the facilities of North Wire, Inc. Kentucky Utilities' threatened action violates Inter-County's clear entitlement to supply retail electric service to North Wire, Inc. under criteria established under KRS 278.017(3) and 278.018(1), to-wit:

- (a) The proximity of existing distribution lines to such certified territory.
- (b) Which supplier was first furnishing retail electric service, and the age of existing facilities in the area.
- (c) The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service at reasonable costs.
- (d) The elimination and prevention of duplication of electric lines and facilities supplying such territory.

9. As shown on Exhibit "1", Inter-County has a distribution line on Tract 2F from which it is serving the electrical requirements of North Wire, Inc. This distribution line, at its present location, was constructed about 1938, pursuant to a written grant of easement, a copy of which is attached hereto and referred to herein as Exhibit "4". This distribution line was upgraded from 12 kV to 25 kV on August 18, 1991, and is capable of serving the electrical requirements of North Wire, Inc. Moreover, Inter-County's distribution line is 51 feet from North Wire, Inc.'s facility and, by comparison, the closest distribution line of Kentucky Utilities is 248 feet from this same facility. For Kentucky Utilities to provide retail electric service to this facility, it would need to build new facilities

which would duplicate the existing facilities of Inter-County on site which are currently supplying the electrical requirements of the customer.

10. Inter-County is ready, willing and able to continue providing for the electrical requirements of North Wire, Inc. with dependable, high quality retail electric service at reasonable cost. The provision of retail electric service by Inter-County to North Wire, Inc. promotes the purposes of KRS 278.016 by avoiding the wasteful duplication of distribution facilities, the unnecessary encumbering of the landscape of the Commonwealth of Kentucky, and the waste of material and natural resources.

11. The provision of retail electric service by Kentucky Utilities to North Wire, Inc. is a violation of KRS 278.017(3) and 278.018(1). Accordingly, this Commission should order and direct that Kentucky Utilities not furnish, make available, render or extend its retail electric service to North Wire, Inc.

WHEREFORE, Inter-County, as Complainant, respectfully prays that the Public Service Commission enter its Order directing that Kentucky Utilities not furnish, make available, render or extend its retail electric service to North Wire, Inc., or otherwise interfere with Inter-County's statutory entitlement to provide this retail electric service on a permanent basis. Inter-County further prays that the Commission's Order be rendered on an expedited basis.

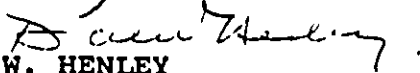
Dated at Winchester, Kentucky, this 29th day of August,
1994.


WILLIAM M. DISHMAN, JR.


ELIZABETH G. NICKELS

SILLIMAN, DISHMAN & NICKELS
340 W. MAIN STREET
P.O. BOX 850
DANVILLE, KY 40422
(606) 236-3757

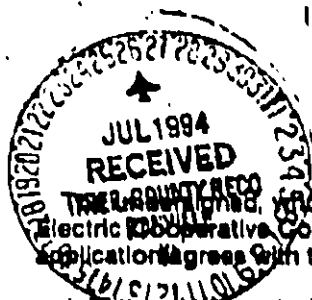

FOSTER J. COLLIS


DALE W. HENLEY
P.O. BOX 707
WINCHESTER, KY 40392-0707

COUNSEL FOR COMPLAINANT,
INTER-COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION

INTER-COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION
DANVILLE, KENTUCKY 40422

MEMBERSHIP APPLICATION



I, the undersigned, who is not receiving central station service, hereby applies for membership in Inter-County Rural Electric Cooperative Corporation (hereinafter called the "Corporation") and in consideration of the acceptance of this application I agree with the Corporation as follows:

1. The undersigned will pay forthwith to the Corporation a membership fee of \$ \$50.00.
2. As soon as electric energy shall be available after the issuance to the undersigned of a membership certificate, the undersigned will purchase monthly from the Corporation not less than the minimum amount of electric energy which shall from time to time be determined by the Board of Directors of the Corporation and will pay therefor and all additional electric energy used by the undersigned, the price shall from time to time be fixed therefor by the Board of Directors.
3. The undersigned will grant to the Corporation at its request the necessary rights, privileges and easements to construct, operate, replace, repair and perpetually maintain on the property owned or occupied by the undersigned, and in or upon all roads, streets or highways abutting said property, its line or lines for the transmission or distribution of electric energy to the member or other members, and will execute and deliver to the Corporation any conveyance, grant or instrument which the Corporation shall deem necessary or convenient for said purposes or any of them. All service lines supplying the undersigned with electric energy and all switches, meters and other appliances and equipment constructed or installed by the Corporation on said property, except so much thereof, if any, as shall be paid by the undersigned, shall at all times be the sole property of the Corporation, and the Corporation shall have the right of access to said property to repair and service, and upon the discontinuance of service for any reason, to remove the same.
4. The undersigned shall have all the rights and privileges granted to members under the Articles of Incorporation and by-laws of the Corporation or any amendments thereto and will comply with and be bound by said Articles of Incorporation and by-laws and all rules and regulations as may from time to time be adopted by the Board of Directors of the Corporation.
5. The acceptance of this application by the Corporation shall constitute an agreement between the Corporation and the undersigned upon terms hereinabove set forth.
6. If this is to be an application for joint membership, the undersigned state that they are husband and wife, acknowledge that they have received a copy of the by-laws of the Corporation, are fully aware of the provisions relating to joint membership, and do hereby agree to comply with and be bound by these said provisions recognizing that they are jointly and severally liable for all obligations and that the act of either of them shall constitute the act of both.
7. The cost of a subscription to RURAL KENTUCKIAN Magazine is to be paid for as a part of the cost of electric service.
8. The undersigned hereby acknowledge receipt of a copy of the membership application.

Amount: \$ \$50.00 ☐ (Cash) ☒ (Check)

Applicant

Fee Paid _____
(Date)

Applicant

Collected and
Witnessed by: SAM/MAIL

P.O. BOX 247, OSCEOLA, WI 54020
Address of Applicant(s)

The above application accepted by Inter-County Rural Electric Cooperative Corporation the _____
day of _____, 19 94

INTER-COUNTY RURAL ELECTRIC COOPERATIVE CORPORATION

By James E. Preston
Secretary
Nat. Business

KENTUCKY UTILITIES COMPANY
ONE QUALITY STREET
LEXINGTON, KENTUCKY 40507

GARY BLAKE
Vice President

General Office (502) 525-2100
Telegraph (502) 525-1100

August 26, 1994

Mr. Leo Hill
Manager
Inter-County RECC
1009 Mountonville Road
Danville, KY 40423

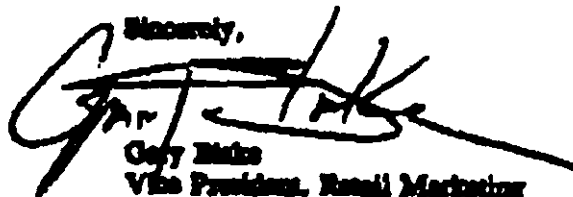
Dear Mr. Hill:

As communicated in our telephone conversation of August 22, 1994, Kentucky Utilities has carefully reviewed the service request from Kentucky Wire and Cable Company in Lebanon. We believe that Kentucky Utilities has the right and obligation to serve this customer.

KU has sought to maintain open communications with Inter-County in order to resolve the situation reasonably. KU has also sought to give due respect to the customer's service needs, construction plans and request for service.

You had earlier suggested that our attorneys should discuss the issue. However, based upon the contents of your telefaxed letter of August 25th, we question whether such communication would be worthwhile. However, if you still believe that it would be useful for our attorneys to discuss the matter, please have your attorney contact either Rick Newell or Wade Hendricks at (502) 522-1601.

Sincerely,



Gary Blake
Vice President, Retail Marketing

cc: M. Goodlett
R. Hewitt
R. Newell
W. Hendricks
G. Thomas

TOTAL P.02

TOTAL P.03

RIGHT OF WAY EASEMENT

In consideration of the work done, expenditures made and rights and privileges granted by others, and for other valuable considerations, the receipt whereof is hereby acknowledged, the undersigned,

~~Wm. D. Kirkland~~
 Wm. D. Kirkland

and ~~Widow~~

his wife

(herein referred to as the "grantors") do hereby grant and convey unto Inter-County Rural Electric Cooperative Corporation, a corporation, with its principal office in Danville, Kentucky, and to its successors and assigns (all herein referred to as the "grantee") forever, the right, power and privilege to erect and to construct and to perpetually maintain, inspect, repair, rebuild and re-locate an electric transmission or distribution line or system along, upon, over and across the lands of the grantors hereinafter described, including the right to cut and trim trees to the extent necessary to keep them clear of said electric line or system and to cut down from time to time all dead, weak, leaning or dangerous trees that are tall enough to strike the wires in falling; there is also included in this grant the right of access over the lands hereinafter described to and from said electric line or system in the exercise of the rights and privileges herein granted, provided, however, that in the exercise of said right of access, established highways or farm roads shall be used whenever it is practicable to do so.

The lands of the grantors over which this easement is granted are situated in County, Kentucky, and are described as follows, to-wit:

Located on the Old Calvary Pike road,
 about 1.4 miles from the town of Edmonton
 Bounded on the North by the lands of Jos. Gansbury & Robert Johnson
 Bounded on the East by the lands of Calvary Pike
 Bounded on the South by the lands of Master Rogers
 Bounded on the West by the lands of National Cemetery & W. B. Smith
 and containing 7.0 acres more or less;
 being the same real estate conveyed to Wm. D. Kirkland
 by deed from J. B. Smith Master Commissioner Marion
 dated Feb 24, 1938 and now of record in the Office of
 the Clerk of the Marion County Court in Deed Book 6, page 230.

Reference to said record is hereby specifically made for the description therein contained.

Said electric line or system shall be located within twenty-five (25) feet of the middle line of the right of way, which middle line is described as follows, to-wit:

Beginning at a point in the line of the grantors and J. M. Rogers across the
 and running thence West Calvary Pike.

across the lands of the grantors to a point in their line and the line of A. B. Smith.

STATE OF KENTUCKY
COUNTY OF *Harro*

I, *Betty White* Notary Public in and for the State of Kentucky, do hereby certify that the foregoing instrument of writing was this day produced to me in the above county and state and that it was acknowledged therein by *Pearl D. [unclear]* and *Wida [unclear]* his wife, to be their act and deed and the act and deed of each of them for the purposes therein mentioned.

Given under my hand this *29* day of *June*, 19*37*.

Betty White
Notary Public Harro County, Kentucky
My commission expires September 28, 1941

STATE OF KENTUCKY
COUNTY OF

I,
hereby certify that the foregoing instrument of writing was this day produced to me in the above county and state and that it was acknowledged therein by
his wife, to be their act and deed and the act and deed of each of them for the purposes therein mentioned.

Given under my hand this day of , 19 .

STATE OF KENTUCKY
COUNTY OF

I,
hereby certify that the foregoing instrument of writing was this day produced to me in the above county and state and that it was acknowledged therein by
his wife, to be their act and deed and the act and deed of each of them for the purposes therein mentioned.

Given under my hand this day of , 19 .

DOUBLE

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

INTER-COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION

COMPLAINANT

VS:

MOTION

CASE NO. _____

KENTUCKY UTILITIES COMPANY

DEFENDANT

* * * * *

Complainant, Inter-County Rural Electric Cooperative Corporation ("Inter-County"), respectfully moves the Commission for the entry of an Order forthwith directing that, pending the conclusion of this proceeding, the Kentucky Utilities Company ("Kentucky Utilities") not furnish, make available, render or extend its retail electric service to North Wire, Inc.

In support of the foregoing Motion, Inter-County states that it has been informed and therefore believes that it is the intention of Kentucky Utilities to extend its retail service to North Wire, Inc. immediately, and such extension of service will harm Inter-County as well as the customers of Kentucky Utilities because it is probable that this Commission will ultimately require Kentucky Utilities to remove any of its equipment utilized to furnish retail electric service to said customer. The cost of installing such equipment as well as the cost of removing such equipment can be saved by the entry of an Order as requested herein. Further, North Wire, Inc. is receiving service sufficient for its electrical requirements from Inter-County, and

Inter-County is ready, willing and able to provide all of the electrical requirements of North Wire, Inc. on a permanent basis.

WHEREFORE, Inter-County prays for an Order appropriate to the relief herein requested. Attached hereto is a proposed form of Order.

Respectfully submitted,

William M. Dishman, Jr.
WILLIAM M. DISHMAN, JR.

Elizabeth G. Nickels
ELIZABETH G. NICKELS

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340 W. MAIN STREET
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Foster J. Collis
FOSTER J. COLLIS

Dale W. Henley
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WINCHESTER, KY 40392-0707

COUNSEL FOR COMPLAINANT,
INTER-COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

INTER-COUNTY RURAL ELECTRIC
COOPERATIVE CORPORATION

COMPLAINANT

VS:

ORDER

CASE NO. _____

KENTUCKY UTILITIES COMPANY

DEFENDANT

* * * * *

On August ____, 1994, Inter-County Rural Electric Cooperative Corporation ("Inter-County") filed a Complaint against the Kentucky Utilities Company ("Kentucky Utilities") alleging that Kentucky Utilities intends to provide retail electric service to North Wire, Inc., which is a resident of the Lebanon-Marion County Industrial Park, and a current retail customer of Inter-County.

Inter-County further alleges that such service by Kentucky Utilities violates KRS 278.016, 278.017(3) and 278.018(1), and asked the Commission to enter an Order directing Kentucky Utilities not to furnish, make available, render or extend its retail electric service to North Wire, Inc. Simultaneous with filing its Complaint, Inter-County also filed a Motion for the entry of an Order for that relief pending the resolution of the case.

Based upon facts set forth in the Complaint, it appears that Inter-County may well be entitled to the relief it has requested. For the present, the customer's electrical requirements are being

adequately served by Inter-County pursuant to a voluntary arrangement between Inter-County and its customer. Being mindful of the purposes expressed in KRS 278.016,

IT IS ORDERED that:

1. Kentucky Utilities shall not furnish, make available, render or extend its retail electric service to North Wire, Inc. pending a final order in this case.

2. The final decision on the merits of this case shall be and hereby is held in abeyance pending further proceedings by the Commission.

So entered this ____ day of _____, 1994.
